

STATE OF MICHIGAN
COURT OF APPEALS

ALLAN FALK, P.C.,

Plaintiff-Appellant,

v

LINDA OLSON,

Defendant-Appellee.

UNPUBLISHED

March 15, 2011

No. 292855

Wayne Circuit Court

LC No. 08-102027-CK

Before: CAVANAGH, P.J., and JANSEN and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right a final order entered in plaintiff's favor in the amount of \$7,861.30 in this lawsuit arising from defendant's alleged failure to pay attorney fees due and owing. We reverse and remand for proceedings consistent with this opinion.

On January 24, 2008, plaintiff filed its complaint against defendant. Plaintiff averred that it provided post-trial, appellate legal services to defendant with regard to her divorce case. These appellate services included work on numerous appeals filed in this Court, as well as our Supreme Court. Plaintiff averred that, pursuant to a retainer agreement, defendant agreed to pay for such services at a rate of \$300 per hour, plus costs, and never objected to the monthly invoices that were submitted to defendant or her legal representative. The outstanding balance was \$11,612.69. Count I of plaintiff's complaint was an account stated claim, Count II was a breach of contract claim, Count III was a breach of implied contract claim, Count IV was a quantum meruit and unjust enrichment claim, and Count V was a promissory estoppel claim. Plaintiff requested a judgment in the amount of \$11,612.69, plus interest, costs, and attorney fees.

On April 29, 2008, plaintiff filed a motion for summary disposition pursuant to MCR 2.119(C)(9) (no valid defense) and (C)(10) (no genuine issue of any material fact). Plaintiff argued that (1) it provided legal services to defendant pursuant to a retainer agreement, (2) defendant was properly billed for services, (3) defendant did not object to the bills, and (4) defendant did not pay the bills, which amounted to \$11,612.69; thus, summary disposition was proper. Defendant opposed the motion for summary dismissal, arguing that (1) she had been improperly charged by plaintiff for legal services it provided to defendant's former divorce attorney, (2) the retainer agreement provided that monthly bills would be sent to her but they were not, and (3) defendant was overcharged for services that were not provided in the amount

of \$10,350.35; thus, genuine issues of material fact existed and summary dismissal would be improper.

On August 27, 2008, defendant filed a motion to impose discovery sanctions and for leave to file a counterclaim alleging that she overpaid plaintiff for appellate legal services in the amount of \$10,350.35. Plaintiff opposed the motion, arguing that her request to file a delayed counterclaim should be denied on the grounds that “it is dilatory and proffered in bad faith, duplicative of her affirmative defenses, contrary to the doctrine of voluntary payment, and based entirely on improper conclusory allegations.” Further, plaintiff argued, defendant’s motion for discovery sanctions should be denied.

On September 19, 2008, the court conducted a hearing on the motions. During the hearing the court indicated that there was a court rule that would permit it to resolve this dispute involving attorney fees and cited MCR 8.122, titled: “Claims by clients against attorneys.” The court then read the court rule into the record and stated: “This rule allows the Court to step in if there is jurisdiction to work out these kinds of disputes. I can work this out under this rule.” The following discussions between the court, plaintiff’s attorney, and defendant’s attorney occurred:

The Court:

Have we agreed to handle it under the Court rule, fee dispute between Olson and Falk?

Plaintiff’s attorney:

Yes.

Defendant’s attorney:

And you will decide it without a trial. You’re going to decide it [in] whatever fashion you deem best as the one Court of justice and that’s it. So you’re going to decide whether or not he owes her or she owes him, and there is going to be a judgment, and it [sic] going to get - -

Plaintiff’s attorney:

No we’re not going to decide if he owes her. Solely if she owes him.

Defendant’s attorney:

No. Wait a minute. That is not what he just said. (Inaudible).

The Court:

Then we do not have an agreement then.

Plaintiff’s attorney:

There is no counter claim.

The Court:

There is no counter claim.

Defendant's attorney:

That's what we're moving for today

* * *

The Court:

Let me say this, if we're going to decide a fee dispute under the rule whether there is or is not a counter claim, it wouldn't be germane anyway. I could still decide her issues and your issues, if you are going to go under the rule. If you're not going to go under the rule and you still want to litigate with the rules of evidence and everything like that, I should just decide the motions.

Defendant's attorney:

Okay, on behalf of my client, I would stipulate under 8.122 for you to decide the whole thing, and you decide it.

The Court:

Are you there or not, because if you're not, I'm just going to decide the motion.

Defendant's attorney:

Let's to [sic] do it. He owes her or she owes him or nobody gets anything.

The Court:

Do you have to make a phone call?

Plaintiff's attorney:

I've got to make a phone call before we can get to that.

* * *

Plaintiff's attorney:

Judge, can we decide it on the motion, the summary disposition motion[?]

The Court:

Well, then do you want me to use the law -- I told you how I would approach it under the Court rule, but if you decide it on the motion then there [sic] all kinds of rules that have to be addressed.

Defendant's attorney:

That's fine.

Plaintiff's attorney:

Let me make a phone call.

* * *

The Court:

Gentlemen, you have had a chance to confer with your clients and I propose that we proceed under the Court's authority. And my understand [sic] is that having had an opportunity to confer with one another and your clients, that you're in agreement to, essentially, dismiss this case and have the Court settle it under the Court rule. Is that correct?

Defendant's attorney:

Yes. And that means that the motions are withdrawn. The Courts [sic] will establish whatever procedural scheme, device, it wants to use to resolve this matter. It's off the docket. You're going to tell us what it is that we're going to do, and you will determine an amount that either one party owes the other or visa versa or no one owes anything, and that will become a judgment of the Court and that will end this. And on behalf of Linda Olson, yes.

The Court:

We'll reopen the case just for the purpose of entering that order, is that your understanding of the agreement?

Plaintiff's attorney:

Yes. That is my understanding on behalf of Allan Falk.

* * *

Plaintiff's attorney:

So, Your Honor, just to recap just to make sure:

All filed motions are being withdrawn.

On October 30, 2008, an order was entered by the circuit court that stated as follows:

This matter was before the Court on September 19, 2008, at which time the Court and the parties agreed to resolve the claims of the parties raised in the complaint, and that any issues raised in the proposed counterclaim may be addressed and resolved in accordance with MCR 8.122. Accordingly,

IT IS ORDERED that this matter will be decided by this Court, and that the Court may utilize and rely on the provisions of MCR 8.122 to the extent the Court deems appropriate, with entry of final judgment by this Court based upon the decision reached.

A hearing was held on December 18, 2008, regarding the Court's attempt to settle this matter. The court advised that additional information was necessary, including documents associated with the appellate cases and various invoices. The court further advised that it was considering the cases of *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008); *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982), and *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), as well as the Michigan Rules of Professional Conduct (MRPC) for guidance in resolving this matter, although they were "not on point for the rule that we decided to operate under." During the hearing, plaintiff's attorney reminded the court that plaintiff provided services to defendant pursuant to a retainer agreement.

On February 10, 2009, citing MCR 8.122, the circuit court entered its opinion and order awarding plaintiff \$7,861.30. First, the court set forth the facts as including that, in 1999, defendant retained attorney Henry Baskin to act as her attorney in a divorce action against her then-husband John Olson. Following the entry of a judgment of divorce, ex-husband Olson filed numerous proceedings in the appellate courts. Defendant then retained plaintiff, signing a retainer agreement that provided for plaintiff's fee at the rate of \$300 an hour. The retainer agreement also provided that plaintiff was to work cooperatively with Baskin and that "instructions from Henry Baskin . . . may be considered as instructions from [defendant] Thereafter, plaintiff performed legal services for defendant and submitted monthly invoices to defendant, except in September 2003, October 2003, November 2003, December 2003, and January 2004—these invoices were submitted to Baskin pursuant to Baskin's instructions. In April 2004, plaintiff received a letter from defendant indicating that she never received plaintiff's September 2003 through January 2004 bills, and questioned whether she had paid for appellate services relating to Baskin's appellate claims for recovery of his attorney fees and costs (which defendant's ex-husband was to pay instead of defendant). Defendant also claimed that she overpaid plaintiff by \$10,350.35, purportedly for Baskin's legal issues. Plaintiff responded by sending defendant the invoices and indicated that defendant was credited for amounts paid by Baskin. Defendant, however, failed to pay plaintiff the balance of \$11,612.69, and this lawsuit followed.

Next, the circuit court turned to law regarding the calculation of a reasonable attorney fee, citing *Khouri*, 481 Mich at 519, *Wood*, 413 Mich at 573, and MRPC 1.5(a). The court proceeded to analyze the issue under the principles set forth in those cases and concluded that plaintiff's attorney fee should be based on an hourly rate of \$272 an hour. The court then indicated that plaintiff claimed to have provided 47.5 hours of legal services from September 2003 through January 2004. After review of the documentation, the court concluded that, of the

47.5 hours, 19.2 hours were attributable to plaintiff's work on legal issues pertaining to Baskin; thus, plaintiff was entitled to recover for 28.3 hours at a rate of \$272, totaling \$7,697.60. Further, plaintiff was entitled to \$163.70 in costs for photocopying, shipping, and postage, for a final total amount of \$7,861.30.

On March 3, 2009, plaintiff filed a motion for reconsideration. Plaintiff first argued that the unpaid fees sought by plaintiff did not only arise during the months of September 2003 through January 2004—defendant's arrearage went back to February 2003 and continued through August 2003 for a total of 47.6 hours. Second, defendant's account had already been credited for the "Baskin" issues thus she was not entitled to such a set-off. And, third, the hourly fee that defendant agreed to pay plaintiff for legal services was set by contract at \$300—not \$272 an hour; thus, the court was not permitted to modify this unambiguous contract. See *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005); *Burnett v King*, 263 Mich 33, 36; 248 NW 540 (1933). Further, plaintiff argued, the court failed to address the administrative costs plaintiff incurred by having to bring this action, including the initial eight hours in preparing the complaint and supporting documents, as well as an additional 68.2 hours of time since the complaint was filed and costs of \$959.85 for a total of \$23,839.85. Thus, plaintiff argued that it was entitled to a principal judgment of \$11,612.69, administrative costs of \$23,839.85, plus contract interest at a rate of seven percent under MCL 438.101 from the date each payment was due until paid, judgment interest under MCL 600.6013(8), and costs under MCR 2.625(A)(1) and (2).

On April 7, 2009, defendant filed her response to plaintiff's motion for reconsideration. Defendant argued that the parties agreed by stipulated order to submit the matter to the circuit court for a final determination under MCR 8.122 "which was intended to avoid a trial and foreclose the appellate process." Defendant argued that plaintiff's motion should be denied and that the court should declare that "the agreement of the parties memorialized in the order of this Court was intended to resolve the litigation without trial and without any right to appellate review."

On May 14, 2009, plaintiff filed an objection to defendant's brief opposing its motion for reconsideration. Plaintiff argued that responses to motions for reconsideration cannot be filed as provided by MCR 2.119(F)(2). Further, plaintiff argued that the October 30, 2008 stipulated order merely provided that the case would be decided by the court, and not by a jury. The order's plain language does not evidence any intention to waive either party's right to appeal or seek reconsideration. Moreover, the order's reference to MCR 8.122 had no bearing on plaintiff's claim—the rule is expressly limited to claims by clients against attorneys, not claims by attorneys against clients. See *Steinway v Bolden*, 185 Mich App 234, 236-237; 460 NW2d 306 (1990). MCR 8.122 was included in the order to address defendant's attempt to file a counterclaim against plaintiff, which was implicitly rejected by the court's decision.

On May 15, 2009, the court entered an amended decision and order denying plaintiff's motion for reconsideration. The court noted that the parties "gave this dispute to the court's discretion for resolution." After the court set forth the terms of the October 30, 2009 order and quoted MCR 8.122, it held:

This order was entered pursuant to the agreement of the parties after an extended conference with the court both on and off the record. On its face it applies to all the claims raised in the complaint, any and all counterclaims and that the decision would amount to a final judgment. It gave the court the power to utilize the rule to the extent the court deems appropriate, which resulted in a final and complete resolution that avoided trial. The parties agreed to turn the matter over to the discretion of this court in lieu of trial. Therefore the current motion that, in section after section of the motion for reconsideration commands that we revert back to summary disposition procedures and contract law with regard to the retainer agreement, is outside the stipulated agreement and order of the court. The court ruled specifically as to the fees, costs, counterclaims, potential claims and counterclaims, and any other cause for litigation having to do with the matters raised in the summary disposition. A final determination was that the defendant pays plaintiff \$7,861.30, an [sic] attorney fees and costs in full final and complete resolution of all matters under within case number [sic].

Accordingly, the motion for reconsideration was denied.

Subsequently, plaintiff submitted, under the seven-day rule, a proposed final judgment which included provisions for precomplaint and postcomplaint statutory interest, as well as for taxable costs. The proposed judgment was entered, although defendant filed objections. Defendant then moved to set aside the final judgment, which was granted on the ground that the parties' agreement to submit the matter to the court in its entirety constituted a waiver of plaintiff's request for interest and taxable costs.

On June 19, 2009, the final order closing the case was entered by the circuit court. This appeal followed and resulted in an unpublished opinion. However, upon plaintiff's motion for reconsideration, this Court entered an order vacating that opinion and directed the Clerk of this Court to submit the matter to the next available regularly scheduled case call. *Falk v Olson*, unpublished order of the Court of Appeals, entered January 14, 2011 (Docket No. 292855). Thus, we turn to the issues on appeal.

First, plaintiff argues that the circuit court erred in construing the October 30, 2008 stipulated order as effectively permitting the court to abandon principles of controlling law, as well as legal principles, and as constituting a waiver of plaintiff's right to seek statutory interest and taxable costs. We agree. Stipulations are reviewed on appeal de novo as a question of law. *Oakland Hills Dev Corp v Lueders Drainage Dist*, 212 Mich App 284, 294; 537 NW2d 258 (1995).

The issues on appeal primarily pertain to whether the trial court properly interpreted the stipulation of the parties, including the effect of that stipulation. "A stipulation is to be construed as a whole and in light of the facts and circumstances surrounding its making." *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990). Stipulations are treated like contracts in that they are binding agreements reached by and between the parties. *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000); *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994); *Nuriel*, 186 Mich App at 147. Accordingly, stipulations are interpreted under the same

rules of construction as contracts. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997). The court must ascertain and give effect to the intent of the parties according to the ordinary and plain meaning of the words used. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

In this case, there was extensive discussion on the record before the circuit court entered a written order memorializing the stipulation. That is, at the September 19, 2008 hearing on the parties' motions, as discussed above, the court suggested that it could decide this attorney fee dispute pursuant to MCR 8.122, which provides in relevant part that, with regard to claims by clients against attorneys, the circuit court "has jurisdiction, on verified written complaint of a client, and after reasonable notice and hearing, to enter an order for the payment of money or for the performance of an act by the attorney which law and justice may require." At the outset, it is unclear to us why the circuit court determined that, pursuant to this court rule, it could settle this attorney fee dispute brought by defendant's attorney against defendant for nonpayment of legal fees. MCR 8.122 clearly governs only claims by clients against attorneys, and not claims by attorneys against clients. See *Steinway*, 185 Mich App at 237. Although defendant moved for leave to file a counterclaim against plaintiff alleging an overpayment of fees, the circuit court never specifically granted such leave.

Nevertheless, it plainly appears from the September 19, 2008 hearing record that plaintiff's attorney agreed with the circuit court's decision to utilize MCR 8.122 to resolve, at least, defendant's claim that she overpaid plaintiff. The subsequent order entered on October 30, 2008, supports this conclusion in that it states, in relevant part: "This matter was before the Court on September 19, 2008, at which time the Court and the parties agreed to resolve the claims of the parties raised in the complaint, and that any issues raised in the proposed counterclaim may be addressed and resolved in accordance with MCR 8.122." That is, the stipulation of the parties authorized the circuit court to resolve defendant's purported claims of overpayment, contrary to plaintiff's argument on appeal.

Next, we turn to the issue of what the stipulation meant with regard to the litigation of this case. According to the record, including the circuit court order, it is clear that the parties waived their right to have the matter adjudicated by trial. Instead, it was agreed that the circuit court would decide the contested matter based on the documentary submissions of the parties. The court's order provides: "IT IS ORDERED that this matter will be decided by this Court" Although the circuit court had referenced this agreement as a "settlement," the substantive claims raised in this case were not "settled." "A settlement agreement is a compromise of a disputed claim." *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). Here, a settlement agreement was not reached in that the parties did not resolve by compromise the claims and defenses asserted. The only issue "settled" was the manner in which this case would get resolved—the parties agreed to have the court consider and resolve their claims against each other rather than proceeding with a jury trial as previously requested. And although the court referenced a "dismissal" of this case during the discussions held on September 19, 2008, the case was clearly not dismissed, although it may have been removed from the court's active docket for purposes of scheduling. The October 30, 2008 order also does not indicate that the case was dismissed. Further, it is clear from those discussions that all motions, including plaintiff's motion for summary disposition, were withdrawn, contrary to plaintiff's claim on appeal, and the case was submitted to the circuit court for resolution. The circuit court

indicated, however, that it would review plaintiff's motion for summary disposition only for the purpose of being "apprised of all of the law that you want to call to my attention and everything else."

However, what is not clear from the stipulation is the manner in which the circuit court was to decide plaintiff's substantive claims which were set forth in its complaint. The circuit court order of October 30, 2008, provided that "the Court and the parties agreed to resolve the claims of the parties raised in the complaint, and" . . . the proposed counterclaim and that "this matter will be decided by this Court." At a hearing held on December 18, 2008, the circuit court requested additional information from the parties and indicated that it was considering the cases of *Khoury*, *Wood*, and *Crawley*, as well as MRPC 1.5(a) for guidance in resolving the dispute. Neither party objected to the court considering those cases and MRPC 1.5(a), but plaintiff's attorney reminded the court that there was a retainer agreement between plaintiff and defendant.

The fact that plaintiff and defendant had entered into a retainer agreement was never disputed. Defendant, in fact, never challenged the hourly rate set forth in that retainer agreement, but merely claimed that she was overcharged because plaintiff allegedly performed appellate services for her divorce attorney for which she was billed. Nevertheless, the circuit court's final decision in this matter rendered on February 10, 2009, reduced plaintiff's hourly rate from \$300 an hour, as set forth in the undisputed retainer agreement, to \$272 an hour. We have reviewed the record at length and can find no justification for the circuit court's reduction of the agreed upon hourly rate of \$300. That is, the hourly rate was set by the retainer agreement to which defendant agreed and never disputed. The stipulation that granted the circuit court the authority to decide the dispute did not include the authority to ignore the parties' contractual agreement as set forth in the retainer or the relevant law in that regard. "It is within the inherent power of a court, as the judicial body, to determine the applicable law in each case." *In re Matter of Finlay*, 430 Mich 590, 595; 424 NW2d 272 (1988). The *Khoury*, *Wood*, and *Crawley* cases set forth the analysis in determining reasonable attorney fees as a sanction under court rules or statutes. This analysis is unnecessary in this case where the parties have a retainer agreement and thus reached a mutual agreement as to a reasonable hourly rate—which was never disputed. There is no evidence in the record that plaintiff waived, by the stipulation at issue, its rights under the contract as set forth in the relevant body of law. "A stipulation may not be construed to effect the waiver of a right unless such an intent is plainly indicated." *Nuriel*, 186 Mich App at 147. Accordingly, the circuit court should have enforced the unambiguous term—the hourly rate—set forth in the retainer agreement in resolving this dispute. See *Rory*, 473 Mich at 468-469; *Burnett*, 263 Mich at 36; *Wistrand v Bese*, 23 Mich App 423, 427; 178 NW2d 826 (1970).

Next, we turn to the circuit court's resolution of the number of hours for which plaintiff was entitled to payment for legal services rendered. In plaintiff's complaint, including its attached statement of account, plaintiff alleged that amounts due and owing on defendant's account began in February 2003 and continued through January 2004. In rendering its decision, the circuit court, however, inexplicably confined its analysis and decision to alleged unpaid legal services rendered from September 2003 through January 2004. There is no evidence in the record that plaintiff waived—by the stipulation at issue—its right to seek payment for legal services rendered from February 2003 through September 2003. Accordingly, in determining the issue of plaintiff's unpaid legal fees as set forth in its complaint, as well as defendant's claim that

she overpaid as set forth in her counterclaim, the court should have considered whether plaintiff was entitled to recover unpaid legal fees for services rendered from February 2003 through January 2004.

In summary, the stipulation at issue (1) authorized the circuit court to consider and resolve this dispute on the documentary submissions, rather than by trial, (2) authorized the circuit court to resolve defendant's purported claims of overpayment as set forth in her proposed counterclaim, and (3) authorized the court to resolve plaintiff's substantive claims that defendant owed plaintiff for legal services, consistent with their retainer agreement, rendered between February 2003 and January 2004, as set forth in its complaint. Because the circuit court failed to resolve this dispute in accordance with the stipulation as well as applicable law, remand is necessary.

Next, plaintiff argues on appeal that the circuit court erred in failing to grant plaintiff's motion for summary disposition based on an account stated and erred in failing to address the administrative cost issue set forth in plaintiff's motion for summary disposition. We disagree. As discussed above, at the hearing held on September 19, 2008, plaintiff's attorney specifically agreed, purportedly after speaking with his client several times, to withdraw the motion for summary disposition and submit the case to the circuit court for resolution. In fact, the stipulation at issue clearly supports this conclusion. Accordingly, we reject these arguments.

Next, plaintiff argues that the circuit court erred in deeming defendant's divorce attorney to be plaintiff's client so as to partially absolve defendant of liability for plaintiff's fees for 19.2 hours of legal services rendered on defendant's behalf. We agree. The stipulation at issue included that the circuit court would resolve "any issues raised in the proposed counterclaim" One of the issues raised in defendant's proposed counterclaim was that plaintiff improperly charged defendant for services performed for the benefit of a third party. The circuit court concluded that plaintiff performed 19.2 hours of legal work with regard to appellate issues that concerned defendant's divorce attorney.

However, it appears from the record evidence that plaintiff's provision of appellate legal services in the underlying cases, at all times, was to benefit defendant with regard to appeals filed in cases where defendant was a party. In other words, no matter what issues were raised in the appeals to which defendant was a party, plaintiff's legal services were provided pursuant to the retainer agreement between plaintiff and defendant. It would hardly be reasonable for plaintiff to selectively address only some of the issues raised in the several appeals to which defendant was a party. And the attorney-client relationship that entitled plaintiff to payment for legal services rendered in appellate cases to which defendant was a party was established by contract between plaintiff and defendant, not by contract between plaintiff and defendant's trial attorney. See *Plunkett & Cooney, PC v Capitol Bancorp LTD*, 212 Mich App 325, 329; 536 NW2d 886 (1995). Thus, defendant was contractually obligated to pay for appellate legal services provided to her pursuant to the retainer agreement she entered into with plaintiff. Accordingly, the circuit court's conclusion to the contrary was erroneous. On remand the circuit court is directed to consider and determine all unpaid legal fees arising from plaintiff's work on appeals to which defendant was a party from February 2003 through January 2004.

Next, plaintiff argues that the circuit court erred in denying plaintiff precomplaint interest under MCL 438.101, postcomplaint interest under MCL 600.6013(8), and taxable costs under MCL 600.2401 and MCR 2.625(A)(1) on the ground that these rights were waived by the October 30, 2008 stipulated order. MCL 438.101 pertains to interest on due and unpaid interest pursuant to a written contract like a retainer agreement. MCL 600.6013(8) pertains to interest on a money judgment recovered in a civil action. And MCL 600.2401 and MCR 2.625(A)(1) pertain to prevailing party costs. We have reviewed the circuit court hearings of September 19, 2008 and December 18, 2008, as well as the court's October 30, 2008 stipulated order. We find no reference at all regarding plaintiff's claims for interest and taxable costs that were requested in plaintiff's complaint. The parties agreed by stipulation to submit the dispute to the circuit court for resolution of their claims raised in the complaint and proposed counterclaim, but the circuit court did not consider the issues of interest and taxable costs although neither party agreed to waive these rights. Again, stipulations are construed according to contract principles and, generally, courts must refrain from reading additional terms into a contract. *Michigan Twp Participating Plan v Federal Ins Co*, 233 Mich App 422, 428; 592 NW2d 760 (1999); *Limbach*, 226 Mich App at 394. Further, unless such intent is plainly indicated, a stipulation cannot be construed to effect the waiver of a right. *Nuriel*, 186 Mich App at 147. Accordingly, the circuit court erred in failing to address these issues and in concluding that plaintiff waived these rights by stipulation. On remand the circuit court is directed to consider and determine whether plaintiff is entitled to interest pursuant to the retainer agreement, interest on the money judgment, and taxable costs.

Finally, plaintiff argues that the circuit court erred in denying plaintiff sanctions with regard to defendant's frivolous arguments, false statements of fact, and *ex parte* communications. We disagree. Plaintiff requested sanctions based on these same allegations in various briefs filed including, for example, (1) in plaintiff's answer to defendant's motion to impose discovery sanctions and for leave to file a counterclaim, (2) in plaintiff's reply brief in support of its motion for summary disposition, (3) in plaintiff's objection to defendant's sealed motion for protective order, and (4) in plaintiff's combined answer and brief in opposition to defendant's motion to strike plaintiff's reply briefs and untimely affidavits. However, as discussed above, all motions were withdrawn by stipulation of the parties and the dispute was submitted to the circuit court for resolution. It is axiomatic that, when motions are withdrawn, so too are all of the requests made in motions and responses to motions. Therefore, plaintiff was not entitled to seek the sanctions that were requested by motion or by responses to motions and the circuit court properly rejected plaintiff's argument in this regard.

In conclusion, by stipulation, the parties waived their right to trial and authorized the circuit court to resolve plaintiff's claims set forth in its complaint and defendant's proposed counterclaims—in accordance with MCR 8.122—based on the documentary submissions of the parties. By stipulation, the parties agreed to withdraw all motions and thus all requests for sanctions included in those motions or responses to motions. The parties, however, did not stipulate to waive their legal rights to statutory interest and taxable costs. The stipulation also did not provide that the circuit court could ignore the undisputed terms of the retainer agreement or the relevant contract law in that regard. Further, in considering plaintiff's claim of unpaid legal fees, as well as defendant's claim of overpayment, the circuit court should have deemed the relevant time period from February 2003 through January 2004, and should have included all unpaid legal fees arising from plaintiff's work on all appeals to which defendant was a party

during that time period. Accordingly, this matter is remanded to the circuit court for proceedings consistent with this opinion.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto